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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 27, 2000

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Magalie Roman Salas, Secretary
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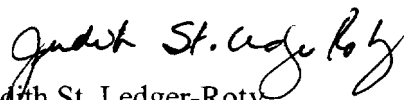
Re: Errata to Phased-in Overlay Proposal Submitted
for Consideration In FCC Docket 99-200.

Dear Ms. Salas:

On Wednesday, November 22, 2000, PCIA submitted its ex parte letter to Yog R. Varma, Deputy Bureau Chief, Common Carrier Bureau, regarding its Overlay Proposal in the proceeding captioned above. Counsel has subsequently discovered a typographical error in the filing. For the convenience of the Commission, a corrected version of the filing is attached. We are also serving on behalf of PCIA the corrected version on all parties previously served by PCIA in this proceeding.

Please contact the undersigned counsel if there are any questions.

Respectfully submitted,


Judith St. Ledger-Roty

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November 22, 2000

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Mr. Yog R. Varma
Deputy Bureau Chief
FEDERAL COMMUNICATIONS COMMISSION
Common Carrier Bureau
445 12th Street, S.W.
Washington, D.C. 20054

Re: Phased-in Overlay Proposal Submitted for Consideration
In FCC Docket 99-200.

Dear Mr. Varma:

Last week, PCIA and several national wireless carriers submitted a consensus proposal for "phased-in" area code relief ("Consensus Proposal") to the Federal Communications Commission ("FCC" or "Commission") for its consideration.¹ The Consensus Proposal spelled out a set of unified and interdependent terms and conditions that, if adopted by the FCC, would provide state public utility commissions with the option to implement "phased-in" area code relief. This Consensus Proposal was crafted by carriers in light of the dire needs of the mobile wireless community for telephone numbers, at a time when states are increasingly focussed on implementing pooling trials, and seeking to comply with federal pooling mandates.

While this phased-in area code relief proposal gives the states another option for area code relief, nonetheless, PCIA hopes that state commissions will use this option sparingly, resorting to it only when they are unable to rely on all service overlays and splits initially. Those means of area code relief continue to be preferential, because they can be implemented on a truly non-discriminatory basis.

¹ See letter to Yog Varma, Deputy Bureau Chief, Common Carrier Bureau, from the undersigned, CC Docket No. 99-200 (November 15, 2000).

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PCIA's support for the Consensus Proposal which, if adopted, would involve non-pooling capable carriers using a new NPA prior to the total exhaust of the old NPA, and reserve a small number of numbers for the pooling administration to assign to pooling capable carriers, does not signal a softening in PCIA's opposition to mandatory service specific or technology specific overlays ("TSOs"). PCIA continues to believe that TSOs discriminate unreasonably against carriers in those codes, and must continue to be unlawful.

Moreover, PCIA's support for phased-in overlays is conditioned upon adoption of all elements of the Consensus Proposal. Adoption of individual elements on a stand alone basis would destroy the careful balance set between many conflicting interests, among which were assuring that any discrimination would be short-lived, and assuring the efficient utilization of NPAs on an ongoing basis. Absent consideration of the elements taken as a whole, the Consensus Proposal would not adequately address wireless carriers' needs, nor would it be in the public interest.

PCIA urges the FCC to grant the states immediate authority to implement the phase-in overlays, as described in the Consensus Proposal. Its terms are substantially similar to a "transitional non-LNP overlay" proposal which SBC Communications put in the record in this proceeding over a year ago.² Moreover, the Consensus Proposal is directly responsive to the Commission's question in this docket, to wit: "if we were to adopt pooling requirements for pooling capable carriers, should we consider allowing the creation of overlay codes specifically for carriers that are not LNP capable."³ The Commission concurrently recognized that "segregating LNP capable and non-LNP capable carriers could have a discriminatory impact on users of the overlay codes, and inhibit the ability of non-LNP capable carriers to compete with LNP capable carriers," and sought comment on how to deal with that concern.⁴ The Consensus Proposal addresses that issue by allowing non-LNP capable (also referred to as "non-pooling capable") carriers to first use a new NPA, but by limiting the outside time frame in which any such discrimination would be tolerated.

As set forth below, each of the elements of the Consensus Proposal has a specific purpose. These purposes range from ensuring the efficient utilization of area codes overall, and the efficient utilization of NXX codes within them, to assuring that any discrimination extant in the Consensus Proposal will be short lived. The elements of the Consensus Proposal also attempt to ensure the competitive neutrality of the proposal across all industry segments, and ensure that all industry segments have telephone numbers available to them so that consumers and businesses continue to have uninterrupted access to their carrier of choice.

² See SBC ex parte, "Number Conservation Issue," dated November 18, 1999.

³ Numbering Resource Optimization, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10432 (1999) "NRO Notice."

⁴ *Id.*

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In the paragraphs below, PCIA briefly sets forth its rationale for each of the Consensus Proposals' provisions.

Element 1. A state commission may order a phased-in overlay if it finds that pooling is either currently available or, based on facts provided in the order, that pooling will be available at the time codes in the phased-in overlay could be activated. NANPA may not release codes from the new phased-in overlay until the original NPA only has remaining the greater of (1) 30 NXX codes; or (2) a quantity of NXX codes equal to one times the number of rate centers in the old NPA (e.g., if there are 50 rate centers in the old NPA, the trigger would be 50 NXX codes; if there are 20 rate centers, the trigger would be 30 NXX codes).

This provision makes clear that use of a phased-in overlay is appropriate only where pooling has been or is being implemented in the underlying NPA that is exhausting. Implementation of phased-in area code relief, and thus the continued availability of NXX codes for non-pooling capable carriers, must be accompanied by pooling in order to assure that all industry segments have equal availability to telephone numbering resources. Moreover, because the phased-in overlay proposal is merely a variant of a standard overlay, rather than a third distinct alternative form of area code relief, the existing NPA must be very close to exhaust before the phased-in overlay can be implemented.

Additionally, under the Consensus Proposal, implementation of the phased-in overlay can take place only where there is a limited number of NXX codes left to ensure that the time frame in which only non-pooling capable carriers are subject to discrimination is of limited duration. In selecting the timeframe, or "trigger" when the phased in overlay could be implemented, the wireless carriers drafting the Consensus Proposal were careful to select a number of NXX codes remaining that would not adversely impact states that have not yet implemented rate center consolidation. However, PCIA continues to encourage the FCC and the states to use all possible means to consolidate rate centers to the maximum extent possible, as only through rate center consolidation can the maximum numbering efficiencies be realized.

Element 2. Non-pooling carriers that qualify for additional numbering resources under the FCC's rules would receive NXX codes from the phased-in overlay NPA. No take-backs of NXX codes would be permitted from non-pooling carriers.

The phased-in overlay is intended by PCIA to allow carriers who cannot participate in pooling to have access to needed telephone numbers from the phased-in overlay code. It is not intended to supplant a non-pooling capable carrier's presence in any existing NPA or NXX codes, as they, like all other carriers in those existing codes, are vested in those codes. There is no basis for any disruption of usage of NXX codes that have already been assigned. This Consensus Proposal by the wireless community does not extend to vacating the existing code but rather allows states and LNP-capable carriers to more easily transition to the new area

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code by preserving for them a small quantity of NXX codes in the existing NPA. In this manner, the Consensus Proposal encompasses the interests of the ILEC and CLEC communities.

The no "take back" element of the Consensus Proposal is consistent with this Commission's steadfast refusal to endorse takebacks of numbers which affect only one industry segment. The Commission has always held to its commitment to not allowing states to discriminately take back a particular industry segments' numbers,⁵ and PCIA urges the Commission to continue to resist requests to discriminate against wireless carriers in this fashion, as such discrimination violates both federal statutes and offends the very notion of fundamental fairness.

Element 3. Once the Pooling Administrator needs additional NXX codes to meet the needs of the pool and there are no remaining NXX codes in the original NPA, the Pooling Administrator would receive all additional NXX codes from the phased-in overlay NPA.

The foregoing marks the transition from the phased-in overlay to a standard overlay. It makes clear that both LNP-capable and non-LNP-capable carriers will use the new overlay code upon exhaust of the existing code of both NXXs and thousand blocks. The non-pooling capable carriers would use codes from the phased-in overlay immediately, and the pooling administrator would use new codes from the phased-in overlay as soon as the pooling administrator's resources in the existing NPA were depleted.

Fundamentally, this provision assures that there will be no ongoing discrimination between pooling capable and non-pooling capable carriers. In other words, it assures that there can be no attempt to create for the longer term "separate, but equal" tracks for numbering relief, and thus avoids locking in potential discrimination among pooling and non-pooling carriers.

Element 4. Permissive ten-digit dialing would commence immediately upon the assignment of the first NXX code from the phased-in overlay NPA to a non-pooling carrier.

Implementation of permissive 10 digit dialing is important for the Consensus Proposal to succeed in the marketplace. More and more people have become accustomed to, or have been required to, use 10 digit dialing. In the phased-in overlay proposal, holders of existing code will have to dial 10 digits in order to reach subscribers in the new code, and holders of the new code will have to dial 10 digits to reach holders of the old code. Yet, because there will be no overall exhaust of the old code, it may be difficult for people to ascertain when to dial 7 digits and when to dial 10 digits. The easy way to avoid that confusion is simply to permit the dialing of both 7 and 10 digits at all times. Moreover, it will more quickly accustom people to dialing

⁵ See "A Proposed 708 Relief Plan and 630 Relief Numbering Plan Area Code by Ameritech-Illinois," 10 FCC Rcd 4596 (1995) ("Ameritech Order").

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10 digits between and among codes, as will be required when LNP capable carriers use the new code, or by November 2000, whichever is sooner.

Element 5. The mandatory ten-digit dialing requirement could be waived until the Pooling Administrator receives a NXX code from the phased-in overlay NPA or November 2002, whichever is sooner.

PCIA does not necessarily advocate a waiver of the 10 digit dialing rule where phased-in overlays are implemented. The Commission has required 10 digit dialing where overlays are implemented in order to lessen the competitive harm that exists where carriers and their customers operate under different dialing plans than other carriers and their customers.⁶ The Commission has clearly recognized the discrimination that results when incumbent carriers' customers are able to dial virtually all of the installed base of telephone numbers using 7 digits, but all users of the new area code are, technologically, required to dial 10 or 11 digits.⁷ Pursuant to the Consensus Proposal, however, and for this unique, narrowly circumscribed circumstance, and for a limited time period, PCIA is willing to live with a waiver if, and only if, in fact it will result in telephone numbers being made available on a timely basis to non-pooling carriers. PCIA stresses that this circumstance would be intolerable under any circumstances other than contained in the Consensus Proposal, whereby all carriers will rely on 10 digit dialing by a date certain, which is close, in time.

Element 6. The geographic boundaries of the phased-in overlay NPA must conform to existing NPA boundaries so that pooling carriers can use NXX codes from the phased-in overlay NPA.

A key element of the Consensus Proposal is ease of implementation. Thus, this element limits the use of the phased-in overlay to circumstances where LNP capable carriers can seamlessly use the phased-in code once the "old" NPA exhausts. That seamlessness is accomplished by limiting the geographic scope of the phased-in code to NPA boundaries. Paramount to the fundamental underpinning of the Consensus Proposal is the principle that *all* carriers must be eligible to take and use numbers from the overlay code at the point when the existing NPA exhausts. PCIA recognizes that there may be efficiencies in numbering utilization gained from having the phased-in overlay code cover more than one NPA, but believes that these efficiencies can only be accomplished where politically feasible. States may choose to overlay more than one code, or to limit the overlay codes' geographic scope to only a single NPA. However, in PCIA's view, that decision rests with the states in the first instance as part of the normal area code relief delegation.

⁶ See Section 52.19(c)(3)(ii).

⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 61 Fed. Reg. 47284, 47328 (1996).

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Element 7. Any state authority over rationing in the existing or phased-in overlay NPA is extinguished upon the release of codes in the phased-in overlay NPA.

As the Commission is no doubt aware, rationing of codes continues to exist across the country. However, rationing by its very nature, deprives carriers that need telephone numbers of this vital resource. While rationing may serve to forestall exhaust, it should not be viewed as an acceptable vehicle for implementing numbering relief. In circumstances where a phased-in area code is being deployed, numbers will be available to non-pooling capable carriers through the phased-in overlay, and to pooling capable carriers from the Pooling Administration. There would be no basis for continuing to ration telephone numbers.

Element 8. As a condition of being granted delegated authority under Section 251(e)(1), state Commissions must provide a source of numbers for all carriers, including non-pooling capable carriers.

The Commission has currently delegated authority to the states to implement area code relief. States who operate under that delegation must fulfill the Commission's overarching obligation to make telephone numbers available to all carriers who need them on a timely, non-discriminatory basis. The Commission's, and thus the states' obligation extends to assuring that numbers are available on a non-discriminatory basis to both pooling and non-pooling carriers. PCIA requests the Commission make clear that actions which are not in accord with these principles exceed the power vested in a particular state, or in the North American Numbering Plan Administration ("NANPA"), and are not permissible.⁸

* * *

⁸ By way of illustration, and not limitation, PCIA reiterates its view that adoption of a technology specific, or wireless only overlay, by any state would, in PCIA's view, exceed the terms of the delegation of authority, and thus be void.

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In closing, PCIA reiterates that this Consensus Proposal was not easily reached, and will not be supported if it is picked apart, element by element. As it exists, the wireless community involved in making this consensus has at risk the degree to which the discrimination inherent in the proposal will affect their customers, and their businesses, and have only accepted such risk in order to ensure the timely availability of telephone numbers. However, the gravity of the risks inherent in the Consensus Proposal cannot be expanded or extended because the discrimination which carriers are looking in the face would just be too great.

If you have any questions regarding this matter, please do not hesitate to contact me.

Respectfully submitted,

Judith St. Ledger-Roty

JSLR/ae

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